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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA

KEN MCFEETERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 01-CV-2026-903312**
	)	
TOMMY TUBERVILLE,	)	
et al.,	)	
	)	
Defendants.	)	

DEFENDANT TUBERVILLE'S MOTION
TO DISMISS , OR ALTERNATIVELY, TO STAY PROCEEDINGS

Defendant Thomas H. Tuberville hereby moves this Court to dismiss this action, or in the alternative, to stay this action. This action is yet another frivolous effort by McFeeters for media attention about the Alabama Constitution's requirement in § 117 that the Governor be a "resident citizen" of this State for the seven years before being elected. The same underlying claim has been presented unsuccessfully elsewhere and resolved against McFeeters. Those previous proceedings includes a trial-type hearing with live cross-examination of Tuberville, and more than 100 pages of evidentiary materials, before the Candidate Committee of the Alabama Republican Party ("ALGOP"). That hearing found that Tuberville satisfied the resident citizen requirement. As further grounds, Tuberville shows the following:

1. The court lacks jurisdiction under Ala. Code § 17-16-44, known as the "jurisdiction-stripping" statute. *See also*, Ala. Const., Art. VI, sec. 142 (providing for limits on circuit court power "as provided by law"). The statute bars action by circuit courts unless specially and specifically enumerated and set down by statute," if "the results of any election are sought to be inquired into questioned or affected . . . ." The statute even nullifies, on its face, "any injunction, process, or order from any judge or court," and provides for immediate stay if an appeal has to be pursued. This action is not based on any statute that confers jurisdiction on this Court in the required "specially and specifically" manner. The declaratory judgment statute, Ala. Code § 6-6-220 *et seq*., does not contain the required specificity. Instead it merely disputes the Alabama Republican Party's nomination by primary election of Tuberville, and its treatment of him as its nominee for the general election. The "jurisdiction-stripping statute" therefore operates to protect the electoral nomination of Tuberville, and it cannot be avoided by arguing the action precedes the general election. The jurisdiction-stripping statute is not inoperative when claims are raised before voting occurs. *See Rice v. Chapman*, 51 So. 3d 1281 (Ala. 2010)(judicial relief not allowed in advance of election to hear effort to enforce Ethics Act bar to ballot listing for default in filing candidate financial disclosures). This action also

seeks to usurp the legislative role outlined in § 115 of the State Constitution in resolving disputes about the eligibility of a candidate.

2. Venue of this action in Jefferson County is also improper. The Secretary of State is an official defendant, and, under Ala. Code § 6-3-2, he "resides" in the county of his official residence - Montgomery County. *See* Ala. Const. Art. V, sec. 118 ("The . . . secretary of state . . . shall . . . reside at the state capitol during the time they continue in office, except during epidemics."); *Hardin v. Fullilove Excavating Co.*, 353 So. 2d 779 (Ala. 1977). This action cannot proceed without the Secretary of State as a party. A declaration merely against Tuberville that he is ineligible would not be proper and would not affect the duties of officials imposed by law, like the Secretary of State's duty to certify to probate judges the persons seeking Statewide office to be listed on local ballots. *See* Ala. Code § 17-9-3; § 6-6-227 ("All persons shall be made parties who have, or claim, any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.").

3. The Verified Complaint, etc. does not reflect that McFeeters exhausted his right to seek relief from the full Alabama State Republican Executive Committee. When McFeeters lost his allegation that Tuberville is ineligible to be elected to the office of Governor before the 20-person ALGOP Candidate Committee in June, he

was entitled to obtain review of that decision before the full Executive Committee. In choosing not to seek that relief, McFeeters forfeited any possible right to relief in the circuit court. *See Ex parte Graddick*, 495 So. 2d 1367, 1370 (Ala. 1986); *Drake v. Alabama Republican Party*, 209 So. 3d 1118 (Ala. Civ. App. 2016)(setting out extensive trial court order by Jefferson County Circuit Judge Donald Blankenship),

4. Moreover, the ALGOP Candidate Committee provided due process to McFeeters. It conducted a hearing on McFeeters's claim that began with written submissions, including documentary evidence, and concluded five days later on June 14 after live cross-examination of Tuberville. In ALGOP's June 14 Final Decision on the election contest filed after the May 19 primary election, the ALGOP confronted the frivolous allegation that Tuberville's 2018 vote in Florida - when he resided there eight years ago - disqualifies him. In fact, the evidence presented to the ALGOP established that Tuberville purchased his Auburn house in 2018, that he has been registered to vote in Alabama since March 2019 and has cast votes only in Alabama since March 2019 - in the 2020, 2022, and 2024 elections. Also, the ALGOP found that Tuberville obtained an Alabama driver's license, filed Alabama tax returns for 2018 and for each and each subsequent year that do not indicate residency in any other state. A copy of the ALGOP Final Decision is attached as Exhibit A.

5. The same underlying claim about Tuberville's "resident citizen" status was made by McFeeters before the May 19 primary election in Covington County Circuit Court. On May 18, that court dismissed his claims. *See McFeeters v. Tuberville*, *et al.*, No. 23-CV-2026-900042, Complaint (23d Jud. Cir., Ala. March 24, 2006); *id*., Order (May 18, 2026).

6. Pending now in the Alabama Supreme Court is the same underlying claim of inadequate "resident citizen" time for Tuberville. That case is styled *State ex rel. Dorgan v. Tuberville*, No. SC 2026-0540, and is an appeal of a July 9 decision of the Montgomery County Circuit Court that refused to be drawn into the dispute. That decision is attached as Exhibit B. Though dressed as a claim with a Latin name - quo warranto, that action sought to disqualify Tuberville, despite the ALGOP Final Decision. That proceeding has an expedited briefing schedule.

7. McFeeters suffers no judicially cognizable harm from a stay of proceedings. He has identified no individual injury he suffers from this Court declining to act. Indeed, he merely faces the possibility that Tuberville will win the majority of the votes of Alabama citizens. That is not the kind of concrete injury sufficient to obtain relief in a circuit court. *See Town of Cedar Bluff v. Citizens Caring for Children*, 904 So. 2d 1253 (Ala. 2004). Any genuine harm is of McFeeter's own making. Page 102 indicates that McFeeters made the Verification of

its contents on July 10, but waited almost three weeks to present it to this Court.

8. McFeeters has still another remedy provided by the Constitution should he continue to claim that Tuberville has not been a "resident citizen" of the State for the previous seven years. Under § 115 of the Constitution, after the general election, McFeeters is free to seek relief from the legislature in yet another election contest disputing Tuberville's "resident citizen" status.

9. The Verified Complaint, etc. fails to state a claim upon which relief may be granted. And, as filed July 28, it fails to comply with the requirement of Rules 7 and 8(a), Ala. R. Civ. P., that a complaint be a "pleading" be a "short and plain statement." The Verified Complaint, etc. is 102 pages, and that does not count the over 400 pages of exhibits. The filing should be dismissed on this basis alone, subject to the terms of Rule 78, Ala. R. Civ. P.

For these reasons, this Court should dismiss the Verified Complaint, or alternatively, impose a stay of proceedings, etc.

Respectfully submitted this the 6th day of August, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the AlaFile System, which will send electronic notification of such filing to counsel of record as listed below, on this the 6th day of August, 2026.

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Alabama Secretary of State Wes Allen
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/s/ Albert L. Jordan
Of Counsel

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Exhibit A

BEFORE THE STATE EXECUTIVE COMMITTEE OF THE ALABAMA REPUBLICAN PARTY

KEN MCFEETERS,	)
	)
Contestant,	)
v.	)
	)
TOMMY TUBERVILLE,	)
	)
Contestee.	)

FINAL DECISION

Sec. 117 of the Alabama Constitution requires the Governor and Lieutenant Governor to "have been citizens of the United States ten years and residents of this state at least seven years next before the date of their election." Mr. Ken McFeeters commenced this Primary Election Contest to challenge whether Sen. Tommy Tuberville meets that requirement. After examining the evidence and arguments presented by McFeeters and Tuberville and considering applicable Alabama law, we conclude that Tuberville meets the requirements of Sec. 117. Accordingly, we deny and dismiss the Contest.

Discussion

A. Legal Standard for Determining "Residence" in Political Contexts

Under Alabama law, the term "resident," when used in the context of political rights and office eligibility, is legally synonymous with "domicile." *Mitchell v. Kinney*, 5 So. 2d 788, 793 (Ala. 1942) ("the terms 'legally resides,' 'inhabitant,' 'resident,' etc., when used in connection with political rights are synonymous with domicile") (citing *Shepherd v. Sartain*, 64 So. 57 (Ala. 1913)). This rule has been reaffirmed by the Alabama Supreme Court as recently as 2015. *Horwitz v. Kirby*, 197 So. 3d 943, 950–51 (Ala. 2015) (holding that, for purposes of voting rights, a college student's domicile does not change simply because they leave home to attend college without a

decided intention to leave one's former domicile and a "certain state of mind" as to making a new locale one's home).

B. Determining Domicile

Domicile is defined as residence at a particular place accompanied by an intention to remain there permanently, or for an indefinite length of time. *Mitchell*, 5 So. 2d at 203. Alabama courts have consolidated this principle into two distinct elements for determining one's domicile: (1) one's physical presence in the chosen place of residence, and (2) an accompanying intent to remain there, either permanently or for an indefinite length of time. *Rabren v. Mudd*, 285 Ala. 531, 535 (Ala. 1970); *see also Livermore v. Livermore*, 822 So. 2d 437, 442 (Ala. 2001). The intent to remain permanently may be inferred from the intent to remain "for an unlimited time." *Ex parte Phillips*, 152 So. 2d 144, 147 (Ala. 1963).

Alabama law establishes several important presumptions governing questions regarding one's domicile. First, a domicile, once acquired, is presumed until a new one has been gained "facto et animo." *Jacobs v. Ryals*, 401 So. 2d 776, 778 (Ala. 1981) (*citing Ex parte Weissinger*, 22 So. 2d 510 (Ala. 1945) ("[I]n order to displace the former, original domicile by acquisition of one of choice, actual residence and intent to remain at the new one must concur"). Second, the fact that a person lives in a particular place creates a prima facie presumption that such place is his or her domicile, which is rebuttable by facts to the contrary. *Mitchell*, 5 So. 2d at 793. Third, where the facts as to one's domicile are conflicting, the presumption is strongly in favor of the original or former domicile, as against an acquired one. *Horwitz*, 197 So. 3d at 950.

Determining one's domicile in the context of state elections is a mixed question of law and fact dependent upon the intention and acts of the individual. *Mitchell*, 5 So. 2d at 793 (finding that the domicile of an individual voter is a mixed question of law and facts depending on the individual

voter's intention and acts). Determining an individual's domicile, which is the consideration for determining whether a political candidate meets the "resident citizen" requirement, is based on a range of factors. *Harris v. McKenzie*, 703 So. 2d 309 (Ala. 1997). The Alabama Supreme Court has identified the following factors as relevant to determining the domicile of a city council candidate whose residency was contested: voter registration, physical habitation, where the candidate's family lives and where the candidate's children attend school, employment location, and community involvement. *Id.* at 311–13. The Court noted in particular that registration to vote is a "potent consideration" for a court to take into account when determining one's domicile, as voting "is indicative of intention with respect to the question [of domicile] and is regarded as importantly bearing upon the place of domicile." *Id.* at 311 (*quoting Ambrose v. Vanderford*, 167 So. 2d 149, 153 (Ala. 1964) (*also quoting Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945)).

Alabama law recognizes that temporary absence from one's domicile does not forfeit residency for political purposes, provided the individual has not exhibited an intent to abandon the former domicile and acquire a new one elsewhere. Ala. Const. art. I, § 31 ("[t]hat temporary absence from the state shall not cause a forfeiture of residence once obtained"); *see also Jacobs*, 401 So. 2d 776 (Ala. 1981). In *Jacobs*, although the Court does not explicitly address the consequences of a temporary absence for purposes of running for state-wide office, the Alabama Supreme Court stated that "temporary absence from one's residence for the purposes of his employment and the like, without the intent to abandon the home town and acquire a domicile elsewhere permanently, or for an indefinite time, does not forfeit his right to vote." *Id.* at 778 (citing *Wilkerson v. Lee*, 181 So. 296, 298 (Ala. 1938)).

C. Applying Alabama Law to this Contest

1. McFeeters Evidence

McFeeters commenced this Contest, so the burden is on him to prove that Tuberville does not meet the legal requirements to be Governor. McFeeters presented evidence as to the ownership and property taxes on Tuberville's home in Alabama and his property in Florida. He also examined Tuberville on the witness stand about his background, his time coaching—both at Auburn and after his time after coaching, and his time as a U.S. Senator, as well as how much time he spends in Auburn, how much time he spends in Florida, and how much time he spends in the District of Columbia, together with the details of his travel back and forth.

The evidence presented by McFeeters is not sufficient to prove that Tuberville fails to meet the requirements of Sec. 117. To accomplish this, McFeeters would have had to prove that Tuberville was not physically present in Alabama or that he did not intend to remain there. Owning property in another state does not prove that, nor does spending time in another state.

McFeeters has complained of not being able to present all of the evidence that he wanted to in this Contest. If that is the case, then he has no one to blame but himself.

McFeeters has been trying to get Tuberville disqualified for months. Shortly after the qualifying period ended in late January, McFeeters filed a Candidate Challenge with the Alabama Republican Party, questioning whether Tuberville met the legal requirements to be Governor and encouraging the Party to investigate. The Candidate Committee considered his Challenge and dismissed it without a hearing on February 1.

On March 24, McFeeters sued Tuberville and the Alabama Republican Party in Covington County Circuit Court, seeking to have the Court determine that Tuberville was ineligible. *See McFeeters v. Tuberville et al.*, Case No. 2026-cv-900042, Covington County Circuit Court. On

May 18, and without McFeeters ever having served his Complaint on Tuberville, the Court dismissed the case due to lack of jurisdiction.

All of which brings us to this Contest. This Contest has proceeded pursuant to the Rules Governing Contests of Primary Elections, and we provided him a copy of these Rules on May 21, six days before he commenced this Contest. According to his post on Facebook on May 24, McFeeters was reviewing the Rules. He commenced this Contest on May 27, presumably having already thought through how he would prosecute the Contest differently from his two previous unsuccessful attempts at disqualifying Tuberville, including by conducting discovery (taking depositions, subpoenaing documents, etc.) pursuant to the Rules. Nevertheless, he waited until June 3 to retain counsel to assist him with this Contest, and he waited until June 8—two days before the Rules required both parties to submit all of their evidence for the Hearing, including the transcript for any deposition taken—to serve a notice of deposition. To our knowledge, he has not noticed any other deposition, nor has he served any requests for documents, requests for admissions, interrogatories, or any other discovery in this Contest, all of which are permitted by the Rules.

It was McFeeters's right to commence the Contest. It was also his right to conduct discovery pursuant to the Rules. Just as it was his right not to conduct any discovery except a single noticed deposition, and it was his right not to serve that notice of deposition until two days before the Rules required him to submit his evidence.

But it is not his right to complain about being unfairly denied the opportunity to present the evidence that he wants. The Rules made clear how he could present whatever evidence he wanted. And he had months to consider what the best evidence of Tuberville's ineligibility would be and how best to obtain that evidence. Instead, McFeeters chose to ignore the Rules and the

discovery rights they provided to him until it was too late to do what he wanted. That is not our fault or the fault of the Rules. If there is any blame for this, it lies squarely on McFeeters.

2. *Tuberville Evidence*

The evidence presented by Tuberville is conclusive as to his being a resident citizen of Alabama since prior to November 2019 (i.e., during the seven-year period required by Sec. 117). Among other things, this evidence proves:

- Tuberville resided in Florida prior to 2018.
- Tuberville purchased his Auburn house in October 2018.
- Tuberville subsequently moved to Alabama.
- Tuberville filed a 2018 Alabama tax return indicating split-residency that year—part in Florida and part in Alabama.
- Tuberville registered to vote in Alabama and obtained an Alabama driver's license in March 2019, listing the Auburn house as his residence.
- Tuberville filed Alabama tax returns for 2019 and each subsequent year that do not indicate residency in any other state.
- In 2019 and 2020, Tuberville successfully ran to be one of Alabama's U.S. Senators, and has served as such since he was sworn in in January 2021.
- In January 2021, the U.S. Senate determined Tuberville to be a resident of Alabama.
- Tuberville voted in Alabama in the 2020, 2022, and 2024 elections.

Based on applicable precedent from the Alabama Supreme Court, including *Harris v. McKenzie*, 703 So. 2d 309 (Ala. 1997), this evidence is sufficient for us to conclude that Tuberville has been physically present in Alabama with the intent to remain here. Indeed, the Alabama Supreme Court has recognized one of the facts proved by Tuberville—registration to vote—is a

particularly "potent consideration" to take into account when determining domicile, as voting "is indicative of intention with respect to the question [of domicile] and is regarded as importantly bearing upon the place of domicile." *Id.* at 311 (*quoting Ambrose v. Vanderford*, 167 So. 2d 149, 153 (Ala. 1964) (*also quoting Ex parte Weissinger*, 22 So. 2d 510, 514 (Ala. 1945)). Moreover, Alabama law recognizes that temporary absence from one's domicile (*e.g.*, representing Alabama in the U.S. Senate) does not forfeit residency for political purposes, provided the individual has not exhibited an intent to abandon the former domicile and acquire a new one elsewhere. Ala. Const. Art. I, § 31 ("[t]hat temporary absence from the state shall not cause a forfeiture of residence once obtained"); *see also Jacobs*, 401 So. 2d 776 (Ala. 1981). No evidence was presented of any intent by Tuberville to abandon his Alabama residency.

Conclusion

McFeeters commenced this Contest but failed to carry his burden of proving that Tuberville does not meet the legal requirements to be Governor of Alabama. That would be sufficient by itself to warrant dismissal of this Contest. But Tuberville also proved the inverse: He does meet the legal requirements to be Governor of Alabama. Accordingly, this Contest is denied and dismissed, and Tuberville is confirmed as the nominee of the Alabama Republican Party to be Governor of Alabama.

Done on this the 14th day of June, 2026.

Scott Stadthagen
Chairman, Alabama Republican Party

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Exhibit B

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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

DORGAN BROOKE LYNN, LEBLANC JUSTIN JUDE, Plaintiffs,	)	
V.	)	Case No.: CV-2026-901053.00
TUBERVILLE THOMAS HAWLEY, ALLEN WESLEY, Defendants.	)	

ORDER

This matter came before the Court on June 29, 2026 for Hearing on Defendant Thomas Hawley Tuberville's (hereinafter "Senator Tuberville") Motion to Dismiss Plaintiffs' Expedited Complaint for Quo Warranto and Declaratory Relief. The grounds asserted in the Motion to Dismiss are set forth in Senator Tuberville's Memorandum in Support of Motion to Dismiss for Lack of Jurisdiction. (Doc. 20). The Plaintiffs' response and objection to said motion was submitted in advance of the hearing. (Doc. 45). Although the Plaintiffs initially asserted a claim for declaratory relief against the Alabama Secretary of State in his official capacity, that claim was voluntarily dismissed prior to the hearing on Senator Tuberville's Motion to Dismiss. The Court notes that the briefs submitted by both parties were thoroughly researched and focused on the applicable statutory and case law relevant to the issues. The Court has invested considerable time in analyzing the same.

The central issue raised in the Defendant's Motion to Dismiss is whether the Circuit Court has jurisdiction over a quo warranto action challenging the eligibility of the certified nominee of a major political party on grounds that he does not meet the residency requirement set forth in §117 of the Alabama Constitution. In order to resolve the issue, this Court is tasked with considering a number of statutes and cases, however imperfectly they align.

Based upon the briefs of the parties and as conceded by the Plaintiffs, there is no Alabama case directly on point. There are, however, numerous Constitutional provisions and statutes that must be given due consideration by the Court.

The Plaintiffs' sole cause of action is for quo warranto pursuant to Alabama Code § 6-6-591, which states in pertinent part:

> "(a) An action may be commenced in the name of the state against the party offending in the following cases:
> (1) When any person usurps, intrudes into or unlawfully holds or exercises any public office, civil or military, any franchise, any profession requiring a license, certificate, or other legal authorization within this state or any office in a corporation created by the authority of this state…"

The Defendant points out that § 6-6-591 must be read in conjunction with §6-6-598, which states:

> "The validity of an election which may be contested under this Code cannot be tried under the provisions of this article."

"The purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" Hudon v. Ivey, 383 So.3d 636 (Ala. 2023) citing 65 Am Jur. 2d Quo Warranto § 122 (1972). In short, quo warranto may be used to challenge whether someone elected or appointed to public office is lawfully holding that office.

The Defendant asserts that this Court lacks jurisdiction to entertain the quo warranto on several grounds, including § 142 of the Alabama Constitution, Ala. Code § 17-16-44 (commonly referenced as the "jurisdiction-stripping statute"), and Ala. Code § 6-6-598. The Defendant further asserts that the quo warranto statute on its face requires the Defendant to hold a *public office* unlawfully whereas the Defendant is merely the nominee of a political party, not a public officer.

In response, the Plaintiffs contend that § 17-16-44 must be narrowly construed and does not deprive the Court of jurisdiction and that Courts have an exclusive duty to interpret and apply the Alabama Constitution. The Plaintiffs further suggest that quo warranto is a proper cause of action to challenge constitutional eligibility and that Alabama case law suggests quo warranto may be used to challenge the eligibility of the certified nominee of a major party.

In examining the applicable statutes referenced in Defendant's Motion to Dismiss, Ala. Code § 17-16-44 provides:

> "No jurisdiction exists in or shall be exercised by any judge or court to entertain any proceeding for ascertaining the legality, conduct, or results of any election, except so far as *authority to do so shall be specially and specifically enumerated* and set down by statute; and any injunction, process, or order from any judge or court, whereby the results of any election are sought to be inquired into, questioned, or affected, or whereby any certificate of election is sought to be inquired into or questioned, *save as may be specially and specifically enumerated and set down by statute*, shall be null and void and shall not be enforced by any officer or obeyed by any person. If any judge or other officer hereafter undertakes to fine or in any wise deal with any person for disobeying any such prohibited injunction, process, or order, such attempt shall be null and void, and an appeal shall lie forthwith therefrom to the Supreme Court then sitting, or next to sit, without bond, and such proceedings shall be suspended by force of such appeal; and the notice to be given of such appeal shall be 14 days."

Alternatively stated, the Court is deprived of jurisdiction to determine disputes involving elections unless specially and specifically enumerated and set down by statute. However, "Statutes restricting the jurisdiction of courts of equity, as defined at common law, and reiterated by statute in Alabama, should be strictly construed." Dennis v. Prather,103 So.59 (Ala. 1925).

The Plaintiffs contend that Ala. Code § 6-6-591 (quo warranto) confers jurisdiction because it specifically grants the Court authority to hear matters wherein a person is alleged to "…unlawfully hold or exercise any public office… or other legal authorization within this State."

With respect to the primary election itself, it is well-settled, "Alabama statutes commit to the state executive committees of the political parties the responsibility and authority to conduct primary election contests." Ala.Code §§ 17–16–70 through 17–16–89. In discharging that responsibility, the party committee exercises powers "such as those conferred on a court of special and limited jurisdiction." *Boyd v. Garrison,* 246 Ala. 122, 19 So.2d 385, 388 (1944).

Moreover, Alabama Code § 17-13-71 provides:

> "The contests of nomination by a party for office, other than a county office, may be instituted by any qualified elector of the state, or of the political subdivision, as the case may be, who belongs to that party and who legally participated in such primary election, upon the following grounds, which may be used separately, or else be joined in the same contest:
> (1) Malconduct, fraud, or corruption on the part of any inspector, clerk, returning officer, canvassing board, or other persons.
> (2) When a person whose nomination is contested was not eligible to the office sought at the time of the declaration of nomination…"

"For over 50 years, the courts in this state have adhered to the legislative mandate that political parties are empowered to settle their own disputes in primary elections. The same rules apply regardless of the office involved. The statutory scheme was first enacted in 1931 and bestowed on political parties in primary election contests subpoena power and prehearing discovery authority which the circuit courts did not have for 40–odd years thereafter. The legislature recognized that these disputes require an early resolution and it gave the political parties the tools to resolve them." Ex Parte Baxley, 496 So.2d 688 (Ala. 1986).

It is undisputed the Republican Party maintains and indeed exercised its authority to hear a post-primary election contest challenging Senator Tuberville's eligibility on the same grounds raised in the instant quo warranto. The party held a hearing before issuing its Final Decision finding that Senator Tuberville met the "resident citizen" duration requirement of §117 of the Constitution of Alabama. Thereafter, the Republican party certified Senator Tuberville as its nominee for the Office of Governor.

§ 117 of the Constitution of Alabama explicitly and unambiguously sets forth the requirements for the Office of Governor:

> "The governor [and lieutenant governor] shall each be at least thirty years of age when elected, and shall have been citizens of the United States ten years and resident citizens of this state at least seven years next before the date of their election."

While the Court has no authority to intervene in primary election contests, the Plaintiffs argue that a quo warranto action lies because the nomination of Senator Tuberville as the Republican nominee for the Office of Governor has been certified to the Secretary of State for inclusion on the general election ballot. The Plaintiffs urge that Alabama state courts have recognized a duty to hear cases where a state party executive committee has failed to follow the mandates of Alabama law. Perloff v. Edington, 293 Ala. 277, 302 So.2d 92 (1974) (writ of prohibition); Hobbie v. Vance, 292 Ala. 367, 294 So.2d 743 (1974) (declaratory judgment and mandamus).

It is undisputed Senator Tuberville was elected by a majority of Republican primary voters as the Republican nominee for the Office of Governor and has been certified as such. This Court is keenly aware that the right to vote in a democracy is among the most precious of all individual rights. The Defendant rightfully asserts that the authority of the judiciary is restricted in matters involving elections, though Alabama case law makes clear that Courts are not divested of all authority merely because the issue presented is one that may impact an election.

"It has long been held that a suit 'arises under' the Constitution if a petitioner's claim 'will be sustained if the Constitution (is) given one construction and will be defeated if (it is) given another." Powell v. McCormack, 395 U.S.486 (1944) citing Bell v. Hood, 327 U.S. 678, 685, 66 S.Ct. 773, 777, 90 L.Ed. 939 (1946). The Constitutional requirements for the Office of Governor are in effect specific constitutional limitations on legislative authority. Judicial enforcement of a constitutional mandate does not derogate the principle of separation of powers. As articulated by the Plaintiffs, the interpretation of the Alabama Constitution has been described as "the special province of the Courts." Jefferson Cnty. v. Weissman, 69 So.3d 827, 838 (Ala. 2011).

In State ex. rel. James v. Reed, 364 So.2d 303 (Ala. 1978), the Alabama Supreme Court determined that § 53 of the Alabama Constitution reserving to both houses of the legislature the power to punish its members for contempt or to expel a member by 2/3 vote did not negate that § 60 (providing that no person convicted of embezzlement of public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature , or capable of holding any office of trust or profit in this state) of the Alabama Constitution operated as a specific constitutional limitation on legislative authority, thereby allowing for judicial enforcement of its mandate.

The requirements for the Office of Governor in § 117 of the Alabama Constitution are clearly set forth and unambiguous, and indeed, as suggested by the Plaintiffs, courts have a solemn and exclusive duty to interpret and apply the Alabama Constitution. That point is not to be overlooked. The Alabama "Constitution is the supreme law of the state, and to it all rules of evidence, procedure, and expediency in conflict with its mandates and prohibitions must yield. The [Alabama] Constitution is the supreme law, limiting the power of the legislature and binding departments of State government and the people themselves subject only to restraints resulting from Federal Constitution and the people themselves." Alexander v. Sate ex.rel.Carver, 150 So.2d 204, 208 (Ala. 1963). The suggestion that Courts are without authority, when properly invoked, to rule upon the Constitutional eligibility of a nominee to hold office is lacking in merit.

Whether the Circuit Court's jurisdiction has been properly invoked through the vehicle of quo warranto, however, is a more nuanced question.

Although not binding upon this Court, the Georgia Supreme Court has observed in distinguishing quo warranto from election contests, "They do not serve precisely the same function, because an election contest is brought by or on behalf of the unsuccessful candidate, but quo warranto is brought by or on behalf of the people for the protection of the public." White v. Miller, 235 Ga. 192 (GA 1975) citing Cutts v. Scandrett, 108 Ga. 620, 628, 34 S.E. 186.

The Defendant points to the mandate in Ala. Code §6-6-598 that quo warranto cannot be maintained because "the validity of an election under this Code cannot be tried under the provisions of this article." The Defendant further maintain that Alabama's election contest laws provide the exclusive remedy at this juncture in the election process.

Ala. Code § 17-13-71 clearly sets forth that contests for nomination by a party for office can be maintained on the ground that a person whose nomination is contested was not eligible to the office sought at the time of declaration of the nomination. Because the ground for relief sought by the Plaintiffs (challenging eligibility of a purported nominee under § 117 of the Constitution) has already been exercised in this case to contest the validity of the Defendant's nomination (and may be asserted following the general election), the Defendant maintains that quo warranto is barred. Conversely, the Plaintiffs aver that they do not contest the validity of the Republican primary election, but rather, seek a judicial determination as to whether Senator Tuberville as a certified nominee meets the constitutional residency requirement to hold the Office of Governor. (Doc. 2, p. 2 and p. 22). Those are distinct inquiries.

In examining relevant case law, Hudson v. Ivey, 383 So.3d 636 (Ala. 2023) stands for the proposition that quo warranto is the exclusive remedy when someone is unlawfully exercising public office. "Stated another way, the purpose of the writ of quo warranto is to ascertain whether an officeholder is 'constitutionally and legally authorized to perform any act in, or exercise any functions of, the office to which he lays claim.'" *Id.* citing 65 Am Jur. 2d Quo Warranto § 122 (1972). The Plaintiff in Hudson sought removal of a judge appointed to a reallocated judgeship on grounds of unconstitutional delegation of legislative authority. Quo warranto was appropriate because a judge had already been appointed by the Governor and was exercising the duties of the reallocated judgeship.

The instant Expedited Complaint for Quo Warranto and Declaratory Relief asserts that "Tuberville has 'usurped, intruded into, or unlawfully holds or exercises a public office" and that he "has usurped and intruded into the *public office* of nominee for Governor through his certified nomination as a candidate." (Doc. 2, p.1 and p. 21). While the "office of nominee" has been recognized by Alabama Courts as conferring "quasi-officer" status, thereby giving its holder a valuable right, there is currently no case law of which this Court is aware holding that a "quasi-officer" falls within the definition of public officer. Rather, State ex.re. Norrell v. Key, 165 So.2d 76 (Ala. 1964) noted that the holder of a certificate of nomination has status as a "quasi-officer," but made no decision regarding whether quo warranto was an appropriate remedy to oust a nominee from office.

The Plaintiffs cite Talton v. Dickinson, 72 So.2d 723 (Ala. 1954) for the proposition that quo warranto is the exclusive remedy to determine whether or not a party is usurping public office. However, the Talton Court specifically noted, "The defendant in the proceeding, appellee here, was only a party nominee to the office, had not been elected and might never have been elected in so far as the present proceedings are concerned, and the private citizens who filed the bill as parties complainant show absolutely no right to have the court adjudicate on the question." *Id.* at p. 13.

Johnson v. Roberson, 682 So.2d 58 (Ala. 1996) is the most persuasive case cited in support of the Plaintiffs' argument that quo warranto may be utilized to challenge the eligibility of a nominee not yet elected to office. The Plaintiff in Johnson was the Democratic nominee for a county commission seat who lost to the Patriot Party candidate, Roberson, in the general election. Following the election, Johnson filed a complaint for declaratory relief challenging whether the Patriot Party complied with statutory requirements to have Roberson's name placed on the ballot. In denying the declaratory relief requested, the trial Court held that Johnson's challenge was untimely because it was asserted after the general election. The Court noted that it was too late to challenge a nomination after the candidate's name had been placed on the ballot and he was elected to office. In a footnote, the Court mentioned Norrell, and further offered that, "a safe practice would be to join quo warranto with a petition for writ of mandamus or prohibition when challenging a candidate's eligibility after the primary election, but prior to the general election." *Id.* Johnson is distinguishable on the grounds that an election contest was unavailable under the circumstances of that case. While Johnson is persuasive, the facts of Johnson are not factually similar to the present case and there is no subsequent case in which the Court's admonition has been reiterated or affirmed. The sole cause of action in this case is for quo warranto—no other claim has been joined.

While the Plaintiffs correctly assert that the quo warranto statute is broad in nature, the allegation in the instant case is that the Defendant unlawfully holds the "public office of nominee for Governor." Ala. Code § 36-25-1 (Code of Ethics for Public Officials) defines "public official" as, "Any person elected to public office, whether or not that person has taken office, by vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county, or municipal level of government or their instrumentalities, including governmental corporations…"

In Burdette v. State Department of Revenue, 487 So.2d 944 (Ala. 1986), the Supreme Court observed: "The terms 'public officer' and 'state officer' have been given various meanings by the authorities, *See generally* § 81A C.J.S. *States* § 80 (1977); 72 Am.Jur.2d *States, Territories, and Dependencies,* § 62 (1974); 67 C.J.S. *Officers* § 8 (1978); 63A Am.Jur.2d *Public Officers and Employees* § 9 (1984). The key characteristic of each is that an officer, public or state, is invested with some portion of the sovereign power of the state, to be exercised by him for the benefit of the public. *See, e.g., State ex rel. Gray v. King,* 395 So.2d 6 (Ala.1981); *Lacy v. State, supra.* An individual, to be an officer, must exercise his duties in his own right and not by permission and under the supervision and control of another." *See Jefferson County v. Case,* 244 Ala. 56, 12 So.2d 343 (1943). *See generally* 67 C.J.S. *Officers* § 10 (1978)."

This Court has wrestled at length with the narrow issue of whether quo warranto may be utilized to challenge the Constitutional eligibility of a certified nominee prior to the general election. Indeed, there is no Alabama case expressly endorsing or rejecting the use of quo warranto to challenge eligibility of a certified nominee prior to the general election. Public interest certainly weighs in favor of judicial resolution of Constitutional eligibility to hold office in advance of a general election. There is also a very strong argument that quo warranto should be available cause of action to challenge the Constitutional eligibility of the certified nominee of a major political party prior to general election for the practical and compelling reasons set forth in the Plaintiffs' response to Motion to Dismiss, including the observation of the Florida Supreme Court in a 1932 case holding, "To an appreciable degree the welfare of the state depends on the manner in which primary laws are executed." State v. Fernandez, 143 So. 638, 640 (1932). While this Court lacks authority to extend the application of quo warranto to a certified nominee, that does not imply that it should not be extended in this case, nor that the Plaintiffs are estopped altogether from seeking Court resolution of Constitutional eligibility to hold office.

While declaratory or other injunctive relief may be available to challenge a certified nominee's eligibility to hold office under the Alabama Constitution, for the aforementioned reasons, this Court finds that it does not have jurisdiction over the sole claim of quo warranto at this time. Accordingly, Defendant's Motion to Dismiss is GRANTED. This is a final order from which immediate appeal may be taken.

DONE this 9th day of July, 2026.

/s/ BROOKE E REID
CIRCUIT JUDGE

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CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA
JACQUELINE ANDERSON SMITH, CLERK

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

BIRMINGHAM DIVISION

KEN McFEETERS, Plaintiff, v. THOMAS HAWLEY TUBERVILLE, individually and in his official capacity as the certified nominee of the Alabama Republican Party for the office of Governor; and WESLEY HARRISON ALLEN, in his official capacity as Secretary of State of Alabama, Defendants.	)	Civil Action No.: 01-CV-2026-903312.00 HON. CHUCK PRICE JURY TRIAL DEMANDED

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT TUBERVILLE'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS

Plaintiff Ken McFeeters, pro se, respectfully submits this response in opposition to Defendant Thomas Hawley Tuberville's Motion to Dismiss or, in the Alternative, To Stay Proceedings (the "Motion"), filed August 6, 2026 (Doc. 30). For the reasons set forth below, the Motion should be denied in its entirety.

INTRODUCTION

This is a pre-election declaratory judgment action arising under Article V, Section 117 of the Constitution of Alabama, which requires that a candidate for Governor be a "resident citizen of this state at least seven years next before the date of their election." The Verified Complaint alleges, with detailed supporting exhibits, that Defendant Tuberville does not satisfy that constitutional durational-residency requirement because, following his 2018 sworn declaration of Florida homestead status, (i) he did not establish Alabama residency within the window between

January 1, 2019 and November 2, 2019 by the concurrence of physical inhabitancy and intent to remain indefinitely that Alabama law requires, see Jacobs v. Ryals, 401 So. 2d 776, 778 (Ala. 1981); Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510, 514 (1945); (ii) he did not markedly demonstrate a denouncement of Florida residency by November 3, 2019, as required to overcome the presumption that a previously established domicile continues until the party asserting change carries the burden of proving an affirmative change, see Ex parte Weissinger, 22 So. 2d at 514; Nora v. Nora, 494 So. 2d 16, 18 (Ala. 1986); and (iii) he did not thereafter maintain continuous residency in Alabama within the seven-year window preceding the November 3, 2026 general election.

Defendant's Motion is a procedural filing that never engages the merits. It offers no affidavit rebutting a single factual allegation in the Verified Complaint. It offers no admissible evidence that Defendant was actually domiciled in Alabama on or before November 3, 2019. It offers no explanation for Defendant's own Florida vote in 2018 or the 2018 Florida tax filing. Instead, Defendant advances nine procedural theories, most of which are inconsistent with one another and none of which withstands scrutiny. The Motion is best understood as an attempt to secure dismissal without ever presenting a merits defense that would require Defendant to testify under oath, produce documents, or submit to cross-examination.

The Motion's central premise, that Ala. Code Section 17-16-44 strips this Court of jurisdiction, is directly contradicted by the very authority Defendant attaches as his Exhibit B. In State of Alabama ex rel. Dorgan v. Tuberville, Case No. 03-CV-2026-901053.00 (Montgomery Circuit Court, July 9, 2026), Judge Brooke Reid expressly held that "declaratory or other injunctive relief may be available to challenge a certified nominee's eligibility to hold office under the Alabama Constitution," and stated that "the suggestion that Courts are without

authority, when properly invoked, to rule upon the Constitutional eligibility of a nominee to hold office is lacking in merit." That is precisely the relief sought here. Defendant cannot rely on the Reid order for a jurisdictional bar in one paragraph and ignore its express language authorizing declaratory relief in the next.

Defendant's reliance on the June 14, 2026 Alabama Republican Party Candidate Committee proceeding is likewise unavailing. As set forth in Section IV below, that proceeding was not a court of competent jurisdiction, was closed to the public and to the press under a gag order, limited each side to forty-five minutes of presentation, was held inside the private offices of a politically connected Birmingham law firm, and was conducted with Defendant represented by counsel who simultaneously serves as longtime legal counsel to the Alabama Republican Party itself and holds an active state law enforcement appointment. That proceeding cannot supply the constitutional-due-process foundation Defendant requires to preclude judicial review of a Section 117 eligibility question.

The remaining grounds fare no better. Venue is proper in Jefferson County, and even if it were not, the remedy is transfer under Rule 82(d)(1), Ala. R. Civ. P., not dismissal. Exhaustion does not bar constitutional challenges to a nominee's eligibility. The prior Covington County action was pre-primary and does not have res judicata effect. The pending Dorgan and LeBlanc appeal in the Alabama Supreme Court concerns quo warranto, not declaratory relief, and does not preclude this parallel action. Plaintiff has standing under Alabama's liberal declaratory-judgment standing rules. The Section 115 legislative post-election contest is not exclusive and, by its terms, cannot provide the pre-election relief Plaintiff seeks. And the length of the Verified Complaint, which is fully supported by twenty-two authenticated exhibits, is not a ground for dismissal under Rule 8. Defendant's alternative request for a stay of proceedings

would deny Plaintiff any pre-election relief and is inconsistent with Defendant's own jurisdiction-stripping theory.

The Court should deny the Motion in its entirety and set this case for expedited consideration consistent with Plaintiff's pending Amended Motion for Expedited Consideration.

STATEMENT OF PROCEEDINGS

1. On July 28, 2026, Plaintiff filed his Verified Complaint for Declaratory Judgment and Injunctive Relief, seeking a declaration that Defendant Tuberville does not meet the Section 117 durational-residency requirement and an order enjoining Secretary of State Wesley Allen from placing his name on the November 3, 2026 general-election ballot. The Verified Complaint is supported by a 400-plus page Exhibit Binder comprising Exhibits 1 through 22, each authenticated by public record certification, business record certification, verified affidavit, or verified public-source materials.

2. On August 1, 2026, Plaintiff filed his Amended Motion for Expedited Consideration (Doc. 27), his Amended Certificate of Service (Doc. 25), and Notices of Deposition and Rule 45 Subpoenas as to non-parties Thomas Tucker Tuberville and Suzanne Marie Tuberville.

3. On August 3, 2026, Plaintiff completed service of process by U.S. Postal Service certified mail, return receipt requested, upon Defendant Tuberville, Defendant Allen, and the two non-party witnesses. The Certificate of Service and Proof of Service documents were filed with the Court on August 5, 2026 (Doc. 28).

4. On August 6, 2026 at 4:54 p.m., Defendant Tuberville, appearing through counsel Albert L. Jordan of Wallace, Jordan, Ratliff and Brandt, LLC and Joe Espy III of Melton, Espy and Williams, P.C., filed the instant Motion to Dismiss or, in the Alternative, To Stay Proceedings (Doc. 30). Defendant's counsel did not raise any objection to insufficient service of

process under Ala. R. Civ. P. 12(b)(5), thereby waiving that defense under Rule 12(h)(1). Defendant's Motion appended two exhibits: the June 14, 2026 Alabama Republican Party Candidate Committee Final Decision (Exhibit A) and Judge Reid's July 9, 2026 order in Dorgan and LeBlanc (Exhibit B).

ARGUMENT

On a Rule 12(b)(6) motion to dismiss, the Court accepts the Verified Complaint's well-pleaded allegations as true and views them in the light most favorable to Plaintiff. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). Dismissal is proper only where it appears beyond doubt that Plaintiff can prove no set of facts entitling him to relief. Id. A motion to stay is likewise disfavored where the movant seeks to postpone judicial review of a matter of substantial public interest requiring pre-election resolution. See Ala. Code Section 6-6-222 (declaratory judgment shall be granted to "terminate the uncertainty or controversy").

I. Section 17-16-44 Does Not Strip This Court of Jurisdiction Over a Pre-Election Declaratory Judgment Action Concerning Constitutional Eligibility.

Defendant's lead argument, that Ala. Code Section 17-16-44 bars this Court from hearing this case, misreads the statute and is squarely refuted by Defendant's own Exhibit B.

Section 17-16-44 provides that "[n]o jurisdiction exists in or shall be exercised by any judge or court to entertain any proceeding for ascertaining the legality, conduct, or results of any election, except so far as authority to do so shall be specially and specifically enumerated and set down by statute." The statute is codified in Title 17, Chapter 16, Article 3, entitled "Election Contests," and its operative language refers to "the results of any election" and inquiries into any "certificate of election." By its terms, Section 17-16-44 governs post-election contests of election

results, not pre-election declaratory judgment actions concerning a candidate's constitutional qualifications to appear on the ballot.

Justices of the Alabama Supreme Court have confirmed this reading. In McInnish v. Bennett, 150 So. 3d 1045, 1049 (Ala. 2014) (Bolin, J., concurring specially), Justice Bolin explained that Section 17-16-44 "appears in Chapter 16, Article 3, of the Election Code. Chapter 16 is entitled 'Post Election Procedures.' Article 3 is entitled 'Election Contests.' Its location in the Code indicates that the jurisdictional restrictions of § 17-16-44 apply only in post-election contests." Id. Justice Bolin further explained that "an election contest can occur only after an election has taken place," citing Sears v. McCrory, 43 So. 3d 1211, 1215 n.4 (Ala. 2009), and Smith v. Burkhalter, 28 So. 3d 730, 735 (Ala. 2009), and concluded that a "pre-election request for an injunction ... thus does not implicate the jurisdiction-stripping statute, which applies only to post-election actions." Id. Justice Bolin's concurrence thus draws a clean line: the jurisdiction-stripping statute reaches only post-election contests, and pre-election challenges to a candidate's constitutional qualifications lie outside its scope. This action is pre-election. Section 17-16-44 does not apply.

Defendant's reliance on Rice v. Chapman, 51 So. 3d 281 (Ala. 2010), is misplaced. Rice involved a challenge to a candidate's compliance with statutory filing requirements under the Alabama Ethics Act, § 36-25-15, and the Fair Campaign Practices Act, § 17-5-4. The Rice petitioners proceeded by petition for extraordinary relief, seeking a writ of prohibition, mandamus, or certiorari, not by declaratory judgment. The Special Supreme Court's per curiam holding rested entirely on the petitioners' failure to identify any statute that "specially and specifically" authorized judicial intervention: the only hook they offered was the "[o]ther provisions of the law notwithstanding" clause in § 36-25-15(c), which the court held was

"general language" that "clearly cannot meet the requirement set forth in § 17-16-44 that a court's authority must be 'specially and specifically enumerated by statute.'" Rice, slip op. at 9-10. Rice did not involve a constitutional-eligibility challenge, did not analyze the Uniform Declaratory Judgment Act, and did not address Article V, Section 117. Plaintiff here does precisely what the Rice petitioners did not: he grounds jurisdiction in a self-executing constitutional provision and in the specifically enumerated Declaratory Judgment Act, Ala. Code § 6-6-220 et seq. Rice is inapposite.

The Alabama Supreme Court has repeatedly entertained pre-election residency and eligibility challenges in the declaratory-judgment posture. See, e.g., Blevins v. Chapman, 47 So. 3d 227, 233-34 (Ala. 2010) (adjudicating pre-election residency requirement for circuit judges); Butler v. Amos, 292 So. 2d 645, 646 (Ala. 1974) (adjudicating residency requirement for state legislators). Section 17-16-44 has never been held to bar such actions.

Hobbie v. Vance, 294 So. 2d 743 (Ala. 1974), is directly on point and forecloses Defendant's jurisdictional argument. In Hobbie, a subcommittee of the State Democratic Executive Committee sustained a residency contest against a state Senate candidate. Id. at 744. The candidate filed a complaint in circuit court the same day, seeking declaratory relief and mandamus to have his name restored to the ballot. Id. SDEC filed a special appearance objecting to the court's jurisdiction and moved to dismiss, contending that neither the circuit court nor the Alabama Supreme Court had jurisdiction. Id. The trial court overruled the jurisdictional objection, heard the case on the merits, and denied relief; Hobbie appealed. Id. On appeal, the Alabama Supreme Court expressly rejected SDEC's jurisdictional argument, holding that "this court rejects SDEC's contentions as to lack of jurisdiction of this or the circuit court." Id. Having taken jurisdiction, the Court then reached the residency merits and applied the

durational-residency requirement of Ala. Const. Art. IV, § 47, together with Butler v. Amos, 292 So. 2d 645 (Ala. 1974), to hold that the candidate was not a resident of the district from which he sought to run. Id. at 747. Hobbie is materially indistinguishable from this case in the respect that matters most: a party tribunal advanced a jurisdictional-bar argument against a pre-election residency challenge, and both the circuit court and the Alabama Supreme Court rejected that argument and reached the residency merits. Defendant's Section 17-16-44 argument here is the same species of jurisdictional-bar argument the Alabama Supreme Court rejected in Hobbie more than fifty years ago.

More importantly, Defendant's own Exhibit B directly contradicts his jurisdiction-stripping argument. In Dorgan and LeBlanc, Judge Reid concluded that "declaratory or other injunctive relief may be available to challenge a certified nominee's eligibility to hold office under the Alabama Constitution," and expressly stated that "the suggestion that Courts are without authority, when properly invoked, to rule upon the Constitutional eligibility of a nominee to hold office is lacking in merit." Dorgan and LeBlanc Order at 6-7 (Def. Ex. B). Judge Reid dismissed Dorgan and LeBlanc only because the plaintiffs there proceeded exclusively under a quo warranto theory rather than a declaratory-judgment theory. Plaintiff McFeeters has done exactly what Judge Reid identified as the appropriate procedural vehicle: he has filed a declaratory judgment action under Ala. Code Section 6-6-220 et seq. Defendant cannot rely on the Dorgan and LeBlanc order to establish a jurisdictional bar while simultaneously ignoring the language in that same order authorizing this precise action.

Nor is Defendant's citation to Ex parte Baxley, 496 So. 2d 688 (Ala. 1986), apposite. Ex parte Baxley addressed post-primary election contests, which are expressly reserved to political-party tribunals under Ala. Code § 17-16-85. It did not address pre-election

constitutional-eligibility challenges brought under the Declaratory Judgment Act. The McInnish concurrences discussed above, as noted, support Plaintiff's position on the pre-election / post-election distinction. And in Gilbert v. Alabama Democratic Party, 293 So. 3d 900 (Ala. 2020) (Wise, J., concurring specially), Justice Wise explained that Alabama courts "must abstain from exercising jurisdiction over purely intra-political-party disputes unless those disputes involve an alleged violation of a state or federal constitutional provision, statute, or regulation." Constitutional eligibility under Section 117 is such a violation, placing this action squarely within the exception Justice Wise identified.

Finally, Defendant's argument proves too much. If Section 17-16-44 truly stripped every Alabama court of jurisdiction over any question that could affect an election, the Alabama Supreme Court would already have dismissed the pending Dorgan and LeBlanc appeal (No. SC 2026-0540) sua sponte for lack of jurisdiction. Instead, the Supreme Court has set that appeal for expedited briefing. The Supreme Court's acceptance of jurisdiction in Dorgan and LeBlanc is dispositive proof that the jurisdictional bar Defendant advances is illusory.

II. Venue Is Proper in Jefferson County; If Not, the Remedy Is Transfer, Not Dismissal.

Defendant's venue argument fails for three reasons. First, venue is proper in Jefferson County under multiple statutory provisions. Second, even if Defendant is correct that Secretary Allen must be sued in Montgomery County, the proper remedy is transfer under Rule 82(d)(1), Ala. R. Civ. P., not dismissal. Third, Secretary Allen is a nominal party whose ministerial role does not dispose of venue over the primary Defendant Tuberville.

The Alabama Republican Party maintains its principal office in Jefferson County. Under Ala. Code Section 6-3-7(a)(2) and (a)(4), an action against a corporate defendant may be brought in the county of the corporation's principal office or in any county in which the corporation was

doing business by agent at the time of the accrual of the cause of action. The ALGOP participated extensively in the underlying pre-primary residency proceeding and issued its June 14, 2026 Final Decision (Def. Ex. A). Actions arising out of that decision properly lie in Jefferson County. The Verified Complaint's factual allegations reach acts that occurred, in whole or in part, in Jefferson County, including the June 14, 2026 ALGOP hearing itself, which took place inside the Birmingham offices of Balch and Bingham LLP, in Jefferson County.

Ala. Code Section 6-3-7 further provides that venue is proper in any county where a substantial part of the events or omissions giving rise to the claim occurred. Jefferson County has a substantial nexus to the ALGOP hearing that Defendant has held out as controlling on the residency question.

Defendant's reliance on Hardin v. Fullilove Excavating Co., 353 So. 2d 779 (Ala. 1977), is misplaced. Hardin held that the Secretary of State "resides" in Montgomery County for venue purposes when the Secretary is a substantive defendant. Here, however, Secretary Allen is being sued in his official capacity solely to enforce the ministerial duty under Ala. Code Section 17-9-3 of not placing an ineligible candidate on the ballot. He is a nominal party. Where the substantive defendant, Tuberville himself, is properly before the Court, and where the gravamen of the action is a declaration of Tuberville's constitutional ineligibility, venue is not controlled by the residence of a nominal ministerial defendant.

Even if Defendant is correct that venue as to Secretary Allen alone is improper in Jefferson County, the remedy is transfer, not dismissal. Rule 82(d)(1), Ala. R. Civ. P., expressly provides that when an action is commenced laying venue in the wrong county, the court, on timely motion of any defendant, shall transfer the action to the court in which the action might have been properly filed. See Hodges v. General Shale Products Corp., 346 So. 2d 416, 417 (Ala.

1977) (holding trial court erred in dismissing rather than transferring where venue was improper). Dismissal for improper venue on an expedited pre-election challenge would prejudice Plaintiff without serving any legitimate procedural interest.

III. Exhaustion of ALGOP Administrative Review Is Not Required for a Constitutional Challenge Under Section 117.

Defendant argues that Plaintiff was required to appeal the June 14, 2026 ALGOP Candidate Committee decision to the full ALGOP State Executive Committee before filing this action. That argument fails for three reasons.

First, exhaustion in Alabama is a prudential doctrine, not a jurisdictional prerequisite, for actions that do not arise under a statutory scheme requiring exhaustion. See Budget Inn of Daphne, Inc. v. City of Daphne, 789 So. 2d 154, 157 (Ala. 2000) (holding that "exhaustion of administrative remedies is a judicially imposed prudential limitation, not an issue of subject-matter jurisdiction" and recognizing exception for constitutional questions of law). Section 117 of the Alabama Constitution is a self-executing constitutional provision. Nothing in the Alabama Constitution, the Alabama Code, or the Rules of the Alabama Republican Party requires a plaintiff to exhaust intra-party administrative remedies before seeking judicial resolution of a constitutional eligibility question.

Second, ALGOP's Candidate Committee is not a court of competent jurisdiction and cannot render a binding judgment on constitutional interpretation. As Judge Reid recognized in Dorgan and LeBlanc, the courts have exclusive duty to interpret and apply the Alabama Constitution. Dorgan and LeBlanc Order at 4 (Def. Ex. B). Any doctrine that would require a plaintiff to submit constitutional questions to a private political-party committee, and to accept that committee's decision as final and binding, would violate separation-of-powers principles under Article III, Section 43 of the Alabama Constitution of 1901 and impinge on the judicial

power vested in the courts under Article VI, Section 139 of the Alabama Constitution of 1901. This is doubly so where, as detailed in Section IV below, the party committee proceeding was itself constitutionally defective.

Third, Defendant's cited authorities are inapposite. Ex parte Graddick, 495 So. 2d 1367 (Ala. 1986), addressed exhaustion of a party-primary election contest under the specific statutory scheme in Ala. Code Sections 17-16-70 et seq., not constitutional-qualification challenges. Drake v. ALGOP, 209 So. 3d 1118 (Ala. Civ. App. 2016), similarly involved a party-internal dispute unconnected to constitutional qualification. Neither case addresses the constitutional eligibility question presented here.

IV. The June 14, 2026 ALGOP Proceeding Did Not Afford Due Process and Cannot Preclude Judicial Review.

Defendant's Motion places heavy emphasis on the June 14, 2026 ALGOP Candidate Committee proceeding, describing it as a "trial-type hearing with live cross-examination." Motion at 4. That characterization is contradicted by the documented conditions under which the hearing was actually conducted. The proceeding was structurally incapable of adjudicating a state constitutional eligibility question and cannot be given res judicata, collateral estoppel, or preclusive effect on this Court's independent review.

First, res judicata under Alabama law requires (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantially the same parties, and (4) with substantially the same subject matter. Hughes v. Allenstein, 514 So. 2d 858, 860 (Ala. 1987). The ALGOP Candidate Committee is not a court. It is a private political-party sub-committee empowered by internal party rules to make candidate-qualification determinations for purposes of ALGOP's own ballot access. Its determinations are not judgments

and do not have preclusive effect in a court of law. See Ex parte Baxley, 496 So. 2d at 693-94 (recognizing party-committee jurisdiction as distinct from court jurisdiction).

Second, the June 14, 2026 hearing was not a neutral adjudication. It was conducted under the following documented conditions, each of which independently deprives the proceeding of the procedural due process required for any tribunal decision that could preclude a subsequent judicial forum:

(a) Location. The hearing was not held at ALGOP headquarters, at any state building, or in any courthouse. It was held inside the Birmingham offices of Balch and Bingham LLP, one of the most politically connected private law firms in Alabama. Balch and Bingham was not counsel to any party in the residency dispute. The presence of the hearing inside those private offices, rather than in a neutral public forum, is itself inconsistent with any claim that the proceeding was structurally neutral.

(b) Closed proceedings. The June 14 hearing was closed to the public and closed to the press. Contemporaneous reporting confirms both facts. See ALGOP Closes Tuberville Residency Hearing, Issues Gag Order, Lagniappe Weekly (June 12, 2026).

(c) Gag order and protective order. Both a gag order and a protective order were entered against the participants and witnesses, preventing any of them from disclosing what occurred or what evidence was presented. See id. This alone deprives the proceeding of the transparency required for its result to be given preclusive effect in a court of law.

(d) Time-limited presentation. Each side was allotted forty-five minutes for its presentation. See ALGOP Reportedly Limits Depositions in Tuberville Contest, Lagniappe Weekly (June 8, 2026). A forty-five minute allocation is manifestly insufficient to receive and cross-examine documentary and testimonial evidence concerning seven years of a candidate's

residence and domicile across two states, multiple tax jurisdictions, and a documented multi-year real-estate acquisition history.

(e) Limited depositions. Discovery was limited, and depositions were curtailed by the hearing officer. See id. This limitation was particularly consequential as to Suzanne Marie Tuberville, Defendant's spouse and joint titleholder of both the Cherry Street, Alabama property and the Florida property central to the residency dispute. Plaintiff sought to depose Mrs. Tuberville and other fact witnesses with direct knowledge of the couple's domicile, but that discovery was foreclosed by the hearing officer. See Ken McFeeters, Statement (June 12, 2026); Scott Johnson, ALGOP Reportedly Limits Depositions in Tuberville Contest, Lagniappe (June 12, 2026). Defendant's Motion now faults Plaintiff for not having taken the very discovery that the party tribunal denied him. A hearing officer cannot foreclose examination of the most probative fact witness on the disputed question and then have the resulting record treated as a full and fair adjudication of that question for res-judicata purposes. A proceeding that limits pre-hearing discovery of the very documentary evidence that would decide the disputed question of domicile cannot provide a meaningful opportunity to be heard on that question.

(f) Structural role of Defendant's counsel. Defendant Tuberville was represented at the June 14 hearing by Albert L. Jordan of Wallace, Jordan, Ratliff and Brandt, LLC. According to Mr. Jordan's own published firm biography, he served as State Legal Counsel to the Alabama Republican Executive Committee from early 2015 through December 2017, and has continued as counsel of record for the Alabama Republican Party in state and federal litigation, including as counsel of record on the party's amicus brief in the Alabama congressional redistricting matter before the United States Supreme Court in January 2022. The Alabama Republican Executive Committee is the governing body of the same Alabama Republican Party whose Candidate

Committee conducted the June 14 hearing. The party's longtime legal counsel was, therefore, defending Defendant Tuberville before a party tribunal, the party itself being the entity holding out the outcome as final and preclusive.

(g) State law enforcement appointment. Mr. Jordan's own firm biography further confirms that he currently holds the appointment of Special Deputy Attorney General of the State of Alabama. That is an active commission from the Office of the Alabama Attorney General, which is the same office that would be expected to review a candidate's tax and residency filings in any independent state process. The presence of an active state law enforcement commission on the head of counsel defending the residency of a candidate before his own party's tribunal further undermines any claim to structural neutrality.

(h) Federal criminal record concerning election conduct. On January 11, 2006, the United States Department of Justice announced that a federal jury in Birmingham had convicted Mr. Jordan of conspiracy to defraud the United States and theft of government property. See U.S. Department of Justice, Press Release, Attorney and Former Jefferson County Sheriff Convicted of Conspiracy and Theft of Government Property (Jan. 11, 2006). The conduct that formed the basis of the conviction involved the misuse of the National Crime Information Center database to run background checks on absentee voters in an attempt to overturn a Jefferson County Sheriff's election that had been lost by thirty-seven votes. See United States v. Jordan, 582 F.3d 1239 (11th Cir. 2009) (affirming conspiracy and theft-of-government-property convictions arising from unauthorized NCIC access to conduct criminal-history checks on absentee voters); U.S. Department of Justice, Press Release, Former Sheriff of Jefferson County, Alabama and Private Attorney Convicted of Conspiracy and Theft of Government Property (Jan. 11, 2006). Plaintiff does not raise these facts to disqualify Mr. Jordan from the practice of law; that is not the office

of this Court. Plaintiff raises them because the combined circumstances of Mr. Jordan's prior federal conviction on election-integrity conduct, his continuing role as state legal counsel to the Alabama Republican Party, and his active Special Deputy Attorney General commission, considered together with the party tribunal setting of the June 14 hearing, foreclose any claim that the resulting decision satisfies the neutrality and due-process requirements the doctrines of res judicata and collateral estoppel presuppose.

Third, the ALGOP hearing addressed the party's internal question of whether Defendant should be removed as the Republican Party's nominee for Governor following his primary election victory. See ALGOP Hearing Tr. at 5-6 (June 14, 2026) (hearing officer describing scope of contest as whether 'Coach is removed as our nominee for governor or … will remain our nominee for governor'). This action addresses a different question: whether Defendant Tuberville satisfies the constitutional eligibility requirements for the office of Governor as measured on November 3, 2026, the date of the general election. The Section 117 measuring date, 'seven years next before the date of their election,' refers to the general election because a governor is elected, not nominated, at the general election. Ala. Const. art. V, Section 117; Ala. Code Section 17-16-40. The ALGOP Candidate Committee's June 2026 finding did not, and could not, adjudicate Defendant's eligibility as measured against the November 3, 2026 date.

Fourth, Defendant has not appended to his Motion any transcript of the ALGOP hearing or any specification of what evidence was received. He merely represents that a hearing occurred and attaches the Candidate Committee's Final Decision. At the Rule 12(b)(6) posture, Plaintiff's Verified Complaint controls the facts before the Court, not unsworn representations from Defendant's counsel.

The June 14 proceeding was, in short, a closed, time-limited, private-office hearing before a party sub-committee, conducted with Defendant represented by the party's own longtime counsel who simultaneously holds a state law enforcement commission and carries a prior federal jury conviction for conduct involving the integrity of a Jefferson County election. Whatever weight such a proceeding may carry within the internal governance of a private political party, it cannot bind this Court's independent review of a state constitutional eligibility question. This Court is the forum the Alabama Constitution assigns to the question, and Judge Reid's Dorgan and LeBlanc order (Def. Ex. B) expressly recognizes that assignment.

V. The Covington County Order Does Not Have Res Judicata Effect.

Defendant asserts that a prior action, McFeeters v. Tuberville, No. 23-CV-2026-900042 (Covington County), dismissed on May 18, 2026, bars this action. It does not.

The Covington County action was filed and dismissed pre-primary. As Defendant himself notes, that action was dismissed on May 18, 2026, before the May 19, 2026 Alabama primary election. The present action, by contrast, was filed post-primary on July 28, 2026, and seeks to prevent Tuberville from appearing on the November 3, 2026 general-election ballot. The two actions arise from different procedural postures, different eligibility measuring dates, and different election contexts.

Alabama res judicata requires "substantially the same subject matter" in both actions. Hughes, 514 So. 2d at 860. A pre-primary declaratory judgment action dismissed for lack of jurisdiction before the primary is not the same subject matter as a post-primary declaratory judgment action concerning general-election eligibility measured on November 3, 2026. Defendant's own Motion concedes that the Covington action was dismissed for lack of

jurisdiction and without service on Defendant, not on any adjudication of Section 117 on the merits. There is no judgment on the merits, and thus no res judicata.

VI. The Pending Dorgan And LeBlanc Appeal Does Not Preclude This Action.

Defendant asks the Court, in the alternative, to stay this action pending the Alabama Supreme Court's disposition of State ex rel. Dorgan and LeBlanc v. Tuberville, No. SC 2026-0540. That request should be denied for several reasons.

First, Dorgan and LeBlanc is a quo warranto action under Ala. Code Section 6-6-591. This action is a declaratory judgment action under Ala. Code Sections 6-6-220 et seq. As Judge Reid's July 9, 2026 order (Def. Ex. B) makes clear, the two procedural vehicles are distinct, and the availability of one does not preclude the other. Judge Reid dismissed Dorgan and LeBlanc precisely because the plaintiffs there proceeded only under a quo warranto theory, while expressly indicating that a declaratory-judgment action would be an appropriate procedural vehicle.

Second, the two actions have different plaintiffs, different parties defendant, different theories, and different requested relief. There is no first-filed bar or abatement issue under Ala. Code Section 6-5-440, which by its terms applies only to two actions 'in the courts of this state at the same time for the same cause and against the same party.' The Covington action was dismissed on May 18, 2026, and is no longer pending. The statutory conditions for abatement are not satisfied.

Third, the passage of time is dispositive. General-election ballots must be certified and printed on a definite statutory timeline. The requested stay would, as a practical matter, deny Plaintiff any pre-election relief regardless of the outcome. This is the very posture that Alabama's declaratory-judgment statute is designed to prevent. Ala. Code Section 6-6-221 (the Declaratory

Judgment Act's purpose is "to settle and to afford relief from uncertainty and insecurity with respects to rights, status, and other legal relations").

Fourth, Defendant's request for a stay is inconsistent with his own jurisdiction-stripping argument. If Section 17-16-44 truly deprives all Alabama courts of jurisdiction over resident-candidate challenges, then a stay is not the appropriate remedy; dismissal for lack of subject-matter jurisdiction is. That Defendant asks for a stay in the alternative confirms that his jurisdiction-stripping theory is not seriously advanced.

VII. Plaintiff Has Standing.

Defendant argues that Plaintiff "has no cognizable injury" and cites Town of Cedar Bluff v. Citizens Caring for Children, 904 So. 2d 1253 (Ala. 2004). That authority is inapposite.

Under Alabama's Declaratory Judgment Act, any "person interested" in a controversy concerning the validity of a constitutional provision may seek a declaration of rights. Ala. Code Section 6-6-223. The Alabama Supreme Court has repeatedly entertained declaratory-judgment and related actions to enforce the constitutional durational-residency requirements applicable to candidates for state office. See Hobbie v. Vance, 294 So. 2d 743 (Ala. 1974) (Section 47 residency requirement applied to state senate candidacy); Butler v. Amos, 292 So. 2d 645 (Ala. 1974) (Section 47 one-year residency requirement applied to House candidacy; candidate declared constitutionally ineligible). Alabama has never required a plaintiff-challenger to hold higher office or have some special interest beyond citizenship and elector status.

Plaintiff is a citizen of Alabama and a resident of Shelby County who maintains his principal place of business in Jefferson County. He is a registered voter and a member of the Alabama Republican Party who voted in the May 19, 2026 primary, and, as alleged in the Verified Complaint, a person with direct interest in ensuring that the November 3, 2026

general-election ballot contains only constitutionally qualified candidates. That is more than sufficient under Alabama law.

Defendant's Cedar Bluff citation involved a taxpayer-standing challenge to a municipal use of funds, an entirely different context. It does not restrict declaratory-judgment standing for constitutional-eligibility challenges.

VIII. The Section 115 Legislative Contest Is Not an Exclusive Remedy and Cannot Provide Pre-Election Relief.

Defendant argues that Article V, Section 115 of the Alabama Constitution, which provides for a post-election legislative contest of the office of Governor, is Plaintiff's exclusive remedy. This argument is untenable.

By its express terms, Section 115 applies only after the general election has taken place and only to contests of "election" of the Governor. A candidate must first be "declared elected" before a Section 115 contest can be initiated. Ala. Code Section 17-16-40 (grounds of contest limited to "any person declared elected"); Ala. Code Section 17-16-65 (joint convention as tribunal for contests of Governor). Section 115 therefore cannot provide the relief Plaintiff seeks, which is a pre-election declaration that Defendant Tuberville is constitutionally ineligible and that his name should not appear on the November 3, 2026 general-election ballot in the first place.

Defendant's theory would produce a constitutional anomaly: an ineligible candidate could not be prevented from appearing on the ballot, no matter how clear the constitutional violation, and Alabama voters could be presented with a ballot including a candidate who, if elected, would immediately be disqualified. That is not what the Alabama Constitution requires and not what the Legislature intended. The Declaratory Judgment Act, Ala. Code Section 6-6-220 et seq.,

exists precisely to provide pre-election resolution of constitutional-eligibility disputes of this kind.

Nor is Section 115 exclusive. The Alabama Supreme Court has entertained pre-election residency and eligibility challenges outside the Section 115 framework on numerous occasions. See Blevins v. Chapman, 47 So. 3d 227 (Ala. 2010) (pre-election declaratory action challenging judicial-candidate residency requirement adjudicated on merits); Hobbie v. Vance, 294 So. 2d 743 (Ala. 1974) (pre-election declaratory action concerning legislative-candidate residency); Butler v. Amos, 292 So. 2d 645 (Ala. 1974) (pre-election declaratory action concerning legislative-candidate residency). If Section 115 truly were exclusive, none of these cases could have been adjudicated as it was.

IX. The Verified Complaint Satisfies Ala. R. Civ. P. 8(a), and Its Length Is Not a Ground for Dismissal.

Defendant argues that the Verified Complaint is 102 pages and therefore violates the "short and plain statement" requirement of Ala. R. Civ. P. 8(a). That argument fails.

Rule 8(a) requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Ala. R. Civ. P. 8(a). The Rule does not impose a page limit. Length alone is not a ground for dismissal. See Ala. R. Civ. P. 12(e) (motion for more definite statement is the ordinary remedy where a pleading is so vague or ambiguous that a party cannot reasonably prepare a response); Ala. R. Civ. P. 8(f) ("All pleadings shall be so construed as to do substantial justice."). Verified complaints in complex litigation involving constitutional issues, extensive documentary evidence, and multiple parties are routinely accepted at greater length than typical civil pleadings.

The Verified Complaint's length reflects the seriousness of the constitutional issues, the complexity of the multi-year factual record, and the need for a fully authenticated evidentiary

foundation. Defendant, who has been given more notice of the specific factual allegations against him than Rule 8 requires, cannot credibly claim prejudice from that surplus of notice.

Defendant's assertion that the Verified Complaint fails to state a claim upon which relief can be granted is likewise unfounded. The Verified Complaint alleges, with supporting documentation, that following Defendant's 2018 sworn declaration of Florida homestead status, Defendant (i) did not establish Alabama residency within the window between January 1, 2019 and November 2, 2019, (ii) did not markedly demonstrate a denouncement of Florida residency by November 3, 2019, and (iii) did not thereafter maintain continuous residency in Alabama within the seven-year window preceding November 3, 2026. The Verified Complaint's supporting evidence includes Defendant's 2018 vote in Florida, his 2018 Florida tax filings, his sworn Florida homestead exemption declaration on the Old Beach Road parcel in Walton County under Fla. Stat. Sections 196.031, 196.011, and 196.012(17), and the Auburn Cherry Street property acquisition timeline. Under Alabama law, residency for political purposes means legal domicile, which requires the concurrence of two elements: actual, physical inhabitancy of Alabama and the concurrent intent to remain in Alabama indefinitely. Jacobs v. Ryals, 401 So. 2d 776, 778 (Ala. 1981); Ex parte Weissinger, 247 Ala. 113, 22 So. 2d 510, 514 (1945); Mitchell v. Kinney, 242 Ala. 196, 203, 5 So. 2d 788 (1942); Ex parte Bullen, 236 Ala. 56, 181 So. 498 (1938) ("A man can have but one domicile, at one and the same time, though he may have numerous places of residence."). A previously established domicile is presumed to continue until the party asserting change carries the burden of proving an affirmative change of domicile. Ex parte Weissinger, 22 So. 2d at 514; Nora v. Nora, 494 So. 2d 16, 18 (Ala. 1986). A sworn Florida homestead declaration is a formal act consistent with Florida domicile and inconsistent with contemporaneous Alabama domicile; once made, it triggers the Weissinger and Nora

presumption, and the party asserting a change to Alabama bears the burden of proving both physical inhabitancy of Alabama and intent to remain indefinitely in Alabama by the operative constitutional measuring date. Taking the Verified Complaint's allegations as true, Plaintiff has stated a claim that Defendant did not carry that burden, that he did not markedly demonstrate a denouncement of Florida residency by November 3, 2019, and that he therefore was not a resident citizen of Alabama for at least seven years next before November 3, 2026, and thus is constitutionally ineligible under Section 117.

X. Defendant's Alternative Request for a Stay of Proceedings Must Be Denied.

Defendant styles his Motion in the alternative as a request that the Court stay these proceedings pending disposition of Dorgan and LeBlanc in the Alabama Supreme Court. For the reasons set forth in Section VI above, a stay is inappropriate. Two further considerations warrant separate emphasis here.

First, a stay in this action would, as a practical matter, deny Plaintiff any pre-election relief regardless of the outcome of Dorgan and LeBlanc. General-election ballots must be certified and printed on a fixed statutory calendar. See Ala. Code Section 17-9-3(b) (Secretary of State certification deadline of 69 days before the general election); Ala. Code Section 17-6-21(b) (nomination-finalization deadline of 76 days before the general election); Ala. Code Section 17-6-47 (judge of probate must have ballots printed for state and county elections). If proceedings here are stayed pending the Supreme Court's ruling in Dorgan and LeBlanc, and Dorgan and LeBlanc is thereafter resolved on procedural rather than merits grounds, Plaintiff will have been left without any judicial forum to test Defendant's constitutional eligibility before the November 3, 2026 election. That is not what the Declaratory Judgment Act permits.

Second, granting a stay while Defendant simultaneously pursues dismissal for lack of subject-matter jurisdiction is internally incoherent. A court that lacks jurisdiction has no authority to enter a stay; it can only dismiss. A court that has jurisdiction and considers a stay must weigh the equities. Defendant cannot coherently maintain both positions. If Defendant seriously believed his jurisdiction-stripping argument, he would not have asked for a stay in the alternative. That he has done so confirms that the Motion is a delay tactic, not a jurisdictional challenge.

The proper course is for the Court to deny the Motion in its entirety and to proceed with the expedited schedule requested in Plaintiff's pending Amended Motion for Expedited Consideration (Doc. 27), which remains unopposed.

XI. Defendant Waived His Insufficient Service of Process Defense.

Under Ala. R. Civ. P. 12(h)(1), any defense of insufficient service of process must be raised in a Rule 12 motion or in the responsive pleading, or it is waived. See Kingvision Pay-Per-View, Ltd. v. Ayers, 886 So. 2d 45, 52 (Ala. 2004) (defendant that filed a Rule 12 motion and answer without raising a service-of-process defense waived that defense under Rule 12(h)(1)). Defendant's Motion raises numerous other Rule 12 defenses, including jurisdiction, venue, exhaustion, and failure to state a claim, but does not raise any objection under Rule 12(b)(4) or 12(b)(5) regarding process or service of process. By his own election, Defendant has waived any such defense. Combined with Plaintiff's August 3, 2026 certified-mail service on Defendant's counsel Albert L. Jordan (Wallace, Jordan, Ratliff and Brandt, LLC) and Joe Espy III (Melton, Espy and Williams, P.C.), and Defendant's subsequent appearance in this action through those same counsel, service is complete and unchallenged. This eliminates any purported service-related basis for delay in resolving the merits.

CONCLUSION

Defendant's Motion is a procedural filing that never engages the constitutional merits. Each of its grounds fails as a matter of law, and its alternative request for a stay would deny Plaintiff any pre-election relief while being inconsistent with Defendant's own jurisdictional theory. The Court should deny the Motion in its entirety and proceed to set this action for expedited consideration on the merits.

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Deny Defendant Tuberville's Motion to Dismiss or, in the Alternative, To Stay Proceedings (Doc. 30) in its entirety;

2. Deny Defendant's alternative request for a stay pending Dorgan and LeBlanc;

3. Grant Plaintiff's pending Amended Motion for Expedited Consideration (Doc. 27) and set this action for expedited pretrial and merits proceedings on a schedule that permits adjudication on the merits before August 19, 2026, the statutory deadline under Ala. Code Section 17-13-23 for the Alabama Republican Party to certify a replacement candidate for the November 3, 2026 general election, after which complete relief will no longer be available; and

4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: August 7, 2026

/s/ Ken McFeeters
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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, I electronically filed the foregoing with the Clerk of the Circuit Court of Jefferson County, Alabama, using the AlaFile electronic filing system, which will provide electronic notice of filing to counsel of record for all parties who have appeared:

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